

ORIGINAL

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, DC 20554

In the Matter of )  
 )  
Amendment of the Commission's Rules )  
to Permit Flexible Service Offerings )  
in the Commercial Mobile Radio Services )

WT Docket No. 96-6

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**Comments of**  
**AirTouch Communications, Inc.**  
**and U S WEST NewVector Group, Inc.**

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AirTouch Communications, Inc. ("AirTouch") and U S WEST NewVector Group, Inc. ("NewVector") (collectively, "Filers")<sup>1</sup> hereby file their comments in response to the Commission's Notice of Proposed Rulemaking issued on January 25, 1996.<sup>2</sup> As major domestic providers of cellular, paging, and other wireless services,<sup>3</sup> the Filers encourage the adoption of flexible Commercial Mobile Radio Service ("CMRS") rules that facilitate competition and allow for the deployment of innovative technologies

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<sup>1</sup> AirTouch and NewVector completed Phase I of a joint venture agreement whereby certain aspects of management control of their respective domestic cellular and associated microwave properties have been transferred to a joint venture entity, WMC Partners, L.P. ("WMC") through service and license agreements. AirTouch holds a 70% interest in WMC; NewVector holds a 30% interest. Phase II of the joint venture arrangement will involve the transfer of ownership interests in the cellular properties to WMC.

<sup>2</sup> In the Matter of Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, WT Docket No. 96-6, FCC 96-17, released January 25, 1996 (hereinafter, "Notice").

<sup>3</sup> AirTouch holds interests in cellular networks in many locations in the United States. AirTouch is also a partner in GLOBALSTAR, a satellite system designed to use CDMA technology and shared spectrum. Through its subsidiary, AirTouch Paging, AirTouch is one of the largest paging service providers in the U.S., operating in twenty-one states and the District of Columbia. NewVector holds cellular authorizations throughout the western United States.

and services. The Filers submit that allowing all CMRS providers to engage in fixed services, as proposed in this proceeding, will promote these important objectives.

### **Summary**

The Filers support the Commission's tentative conclusion to allow broadband CMRS carriers to provide wireless local loop services as defined in the Notice and recommends that CMRS providers be permitted to offer other fixed services as well. Moreover, the same opportunities should be made available to narrowband PCS and paging carriers. The Filers believe that adoption of these proposals is not only in the public interest, but also is now mandated by the Telecommunications Act of 1996.<sup>4</sup> Regulatory restrictions should be eliminated to the extent possible, but existing technical and operational rules should be maintained in order to preserve the quality of service provided by current CMRS operations.

- I. All CMRS providers should be authorized to provide wireless local loop and other fixed services.

The Filers support the Commission's tentative conclusion to allow CMRS carriers to provide fixed "wireless local loop" services. Modifications to the Commission's rules so that they state explicitly that such services are permitted will clarify the Commission's intent that wireless local loop service is "a part of the family of services that meet our definition of PCS [and other CMRS], whether implemented as a mobile or fixed service."<sup>5</sup> Clarification will also facilitate implementation of "radio links to replace

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<sup>4</sup> The Telecommunications Act of 1996, 104-104, 110 Stat. 56 (1996) (hereinafter, "Act").

<sup>5</sup> Notice at 10.

existing wireline service or to bring service to rural or less attractive areas otherwise not being adequately served by wireline providers.”<sup>6</sup>

The Filers also endorse the proposed definition of “wireless local loop” because it is sufficiently broad to alleviate the need for the Commission or the licensee to examine the mobile or fixed nature of each particular application. Adoption of the proposed definition will promote administrative efficiency<sup>7</sup> by eliminating the need for continued retooling of the rules as broadband CMRS services mature, such as occurred with respect to regulation of the cellular industry.<sup>8</sup> Permitting CMRS licensees to provide fixed service on a “co-primary” basis with mobile service would be consistent with the reasoning underlying the revisions to the cellular rules; namely, to promote the prompt implementation of advanced technologies, and to facilitate spectrum efficiency.<sup>9</sup>

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<sup>6</sup> Notice at 6.

<sup>7</sup> This process would obviate the need for the Commission to review individual applications in order to grant waivers, or to initiate further rulemaking proceedings. Notice at 7.

<sup>8</sup> The Commission’s cellular rules first required 30 day prior notification by the Commission in order to provide auxiliary services or use advanced cellular technology. Amendment of Parts 2 and 22 of the Commission’s Rules to Permit Liberalization of Technology and Auxiliary Service Offerings in the Domestic Public Cellular Radio Telecommunications Service, Report and Order, 3 FCC Rcd 7033 (1988) (“Flexible Cellular Order”). Later, the Commission lifted the requirement that BETRS was the only fixed service allowed. Amendment of Parts 2 and 22 of the Commission’s Rules to Permit Liberalization of Technology and Auxiliary Services in the Domestic Public Cellular Radio Telecommunications Service, 5 FCC Rcd 1138 (1990). A few years later, the Commission eliminated the prior notification requirement. Amendment of the Commission’s Rules to Establish New Personal Communications Services, 8 FCC Rcd 7700, 7747 (1993) (“Broadband PCS Order”).

<sup>9</sup> Ancillary common carrier services promote spectrum efficiency by allowing “additional common carrier services to be offered on those frequencies not immediately required for cellular service.” Flexible Cellular Order at 7034.

The Filers believe that it would be in the public interest to allow all CMRS providers to provide other fixed services in addition to wireless local loop service. The Commission has already indicated that its definition of PCS allows PCS providers a large degree of flexibility,<sup>10</sup> and specifically enumerated several fixed applications, including wireless PBX services, wireless local area network (LAN) services,<sup>11</sup> “links connecting PCS base stations and other network operations facilities; transmission of PCS network control and signaling information, and facilities linking users’ premises to PCS networks.”<sup>12</sup> Allowing CMRS licensees to provide fixed services other than wireless local loop service will promote efficient use of spectrum and encourage development of new technologies and services.<sup>13</sup>

The Commission notes that fixed services were limited in the past based on a concern that insufficient spectrum would remain available for mobile uses.<sup>14</sup> The Filers submit that this concern is no longer warranted — ample spectrum has been allocated to CMRS to accommodate both mobile and fixed services. In the last three

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<sup>10</sup> Broadband PCS Order at 7712.

<sup>11</sup> Id.

<sup>12</sup> See Letter from Regina M. Keeney, Chief, Wireless Telecommunications Task Force, to A. Thomas Carroccio, Esq., dated November 15, 1994.

<sup>13</sup> The Commission noted that flexibility in the type of service provided “should encourage research and investment to invent, develop, and market new technologies, and spur their deployment to serve consumers.” In the Matter of Allocation of Spectrum Below 5 Ghz Transferred from Federal Government Use, 4660-4685 Mhz, 78 Rad. Reg 2d (P & F) 1173, 1177 (1995) (hereinafter, “GWCS Second Report and Order”).

<sup>14</sup> Notice at 5, 9.

years alone, the Commission has allocated 220 MHz for emerging technologies,<sup>15</sup> including 120 MHz for new broadband PCS.<sup>16</sup> The Commission has also adopted a wide area licensing plan to facilitate deployment of CMRS in the frequencies allocated to SMR service.<sup>17</sup> The introduction of digital technology will also expand capacity dramatically. These developments will ensure the continued availability of sufficient spectrum to meet market demand for mobile service offerings.

The Filers note that the actions proposed in this proceeding are consistent with other deregulatory measures adopted by the Commission which afford CMRS licensees greater flexibility in the use of their spectrum. For example, the Commission authorized PCS providers to provide private services<sup>18</sup> and CMRS licensees are now authorized to provide dispatch service.<sup>19</sup> The Commission has also adopted other “mixed use” spectrum allocations, stating that

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<sup>15</sup> In the Matter of Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, First Report and Order and Third Notice of Proposed Rulemaking, ET Docket No. 92-9, 7 FCC Rcd 6886 (1992).

<sup>16</sup> Amendment of the Commission’s Rules to Establish New Personal Communications Services, Memorandum Opinion and Order, 9 FCC Rcd 4957, 4963, 4970-71 (1994).

<sup>17</sup> Amendment of Part 90 of the Commission’s Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, Notice of Proposed Rulemaking, 8 FCC Rcd 3950 (1993).

<sup>18</sup> “[W]e favor issuing a single license to mobile service providers offering both commercial and private services on the same frequency.” In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order, GN Docket 93-252, 9 FCC Rcd 1411, 1459 (1994).

<sup>19</sup> In the Matter of Eligibility for the Specialized Mobile Radio Services and Radio Services in the 220-222 MHz Land Mobile Band and Use of Radio Dispatch Communications, Report and Order, 10 FCC 6280, 6297 (1995).

“[o]ffering licensees the opportunity to offer a wider variety of services, and to modify the types of services offered in response to changing customer demands, results in competition to provide the services most demanded by customers at prices that are deemed reasonable by the marketplace. This results in a much broader form of competition than just direct price competition for a strictly prescribed set of services.”<sup>20</sup>

Flexible allocation also enhances spectrum efficiency. The Commission has acknowledged, for example, that “the most valuable uses of this [General Commercial Wireless Service (“GCWS”)] spectrum also may differ in urban and rural parts of the Nation, or in regions with different industries, and may change over time. The flexibility of GCWS will permit licensees to adapt to these circumstances without the need for Commission intervention, further contributing to efficient use.”<sup>21</sup> The Filers submit that allowing maximum flexibility for fixed services will allow the licensee discretion to meet consumer needs.

In the Filers’ view, the flexibility to provide wireless local loop and other fixed services should be extended to narrowband PCS and paging licensees.<sup>22</sup> These licensees are already subject to limitations not confronted by broadband CMRS providers

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<sup>20</sup> In the Matter of Allocation of Spectrum Below 5 Ghz Transferred from Federal Government Use, ET Docket No. 94-32, First Report and Order and Second Notice of Proposed Rulemaking, 10 FCC Rcd 4769, 4795 (1995). The Commission has also observed that “restricting the . . . spectrum to defined uses or services . . . would tend to reduce the attractiveness of this spectrum for new technologies and services.” GWCS Second Report and Order at 1180.

<sup>21</sup> GWCS Second Report and Order at 1180.

<sup>22</sup> The Commission has determined that “paging and cellular services are related to each other, as competitors or complements or both.” In the Matter of Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, First Report, 10 FCC Rcd 8844, 8854, n.53 (1995). The Commission had previously found that “the paging industry is highly competitive.” Id. at 8868.



due to limited bandwidth and other spectrum constraints.<sup>23</sup> Notwithstanding these limitations, narrowband PCS and paging licensees are now in a position to provide a broad range of fixed services for residences and businesses at low cost.<sup>24</sup> For example, paging carriers can provide such services as fire and burglar alarm activation, heat and water regulation, and vending machine monitoring. Subjecting narrowband licensees to more stringent regulatory constraints than broadband CMRS providers would discourage the provision of these services, inhibit competition, and increase regulatory disparity.

In the Filers' view, the Commission's proposal to eliminate restrictions against the provision of fixed services by CMRS licensees is consistent with — indeed mandated by — the new regulatory forbearance provisions of the Act.<sup>25</sup> In its discussion in the Conference Report to the Act, Congress indicated that Section 401(a) of the Act (now Section 10(a) of the Communications Act of 1934) requires the following:

“New subsection (a) of section 10 requires the Commission to forbear from applying any provision of the Communications Act or from applying any of its regulations to a telecommunications carrier or telecommunications service, if the Commission determines that enforcement is not necessary to:

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<sup>23</sup> Broadband carriers, by contrast, can provide paging services on a small portion of their authorized spectrum. Broadband carriers, therefore, have some advantages over narrowband carriers by “meet[ing] the demand of their customers for ‘one-stop shopping,’ the ability to buy at one place a mixture of different mobile services.” *Id.* at 8864.

<sup>24</sup> See, e.g., “PCIA’s Paging Universe, PCIA Bulletin, November 17, 1995, 12, (“[P]aging operators have lower cost structures than do their cellular counterparts.”); “PageNet Intros Pager Service That Stores Voice Messages,” Radio Communications Report, Apr. 19, 1993, at 11.

<sup>25</sup> Sections 401 and 402 of the Telecommunications Act of 1996 which added Sections 10 and 11 to the Communications Act of 1934, as amended.

ensure that charges, practices, classifications or regulations for such carrier or service are just and reasonable, and not unjustly or unreasonably discriminatory;

protect consumers; and

protect the public interest.

In making its public interest determinations, the Commission under new subsection (b) of section 10 shall consider whether or not forbearance will promote competition.”<sup>26</sup>

Enabling CMRS licensees to provide fixed services on an unfettered basis, as proposed in this proceeding, will undoubtedly satisfy each of these criteria. Competition will be enhanced and consumers will benefit through increased service options at lower prices. All of these factors dictate that elimination of the fixed services restrictions applicable to CMRS providers will serve the public interest and will promote competition.

II. The Commission should retain its existing technical rules, and should amend operational rules to establish regulatory symmetry.

The Filers support a regulatory structure which maximizes the permissible uses — including fixed uses — of CMRS spectrum. Within this context, however, the Commission should leave existing technical rules intact in order to preserve the current interference-free environment. In addition, the Commission should modify its operational rules to establish symmetry among the various CMRS rule sections.<sup>27</sup>

Since mobile wireless service will continue to be the primary use of CMRS frequencies, the current technical rules for wireless service must be preserved in

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<sup>26</sup> H.R. CONF. REP. No. 458, 104th Cong., 2nd Sess. 184-5 (1996).

<sup>27</sup> The Filers concur with the Commission’s recommendation that the CMRS (Part 20) prohibition on fixed service be removed from the Commission’s rules. In addition, changes may be required to Part 22. A list of proposed changes is attached hereto as Attachment A.

order to protect existing wireless systems from interference.<sup>28</sup> Relaxation of technical requirements may result in impairment of wireless service provided by existing CMRS carriers.<sup>29</sup> Conversely, imposition of stricter technical standards applicable to the provision of fixed service may result in onerous retrofitting requirements for carriers with operational wireless systems.<sup>30</sup> Such a major undertaking could inhibit the introduction of fixed services and thus impede competition.

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<sup>28</sup> The Commission is obliged to protect existing licensees' service areas from interference, absent a compelling reason. "No station that has operated in good faith should be subjected to a change of frequency or power or to a reduction of its normal and established service area, except for compelling reasons." Journal Company v. Federal Radio Commission, 48 F.2d 461, 463 (1931).

<sup>29</sup> The Commission considered these technical limitations in detail in the CMRS rulemaking. "Because specific emission limitations are dependent on such service-specific factors as bandwidth, channel spacing, and the likelihood that different licensees will operate on adjacent channels, substantial changes to these rules may not be necessary or practical." In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Further Notice of Proposed Rulemaking, 9 FCC Rcd. 2863, 2873 (1994), "relaxing existing [co-channel] interference rules could result in licensees facing increased interference from co-channel stations." *Id.* at 2872. "[I]n the case of SMR and cellular, for example, the differences in licensing and channel allocation suggest that it would be impractical either to tighten emission standards for cellular or loosen them for SMR" *Id.* at 2873. In fact, the Commission ultimately decided "[N]o fundamental changes should be made to existing rules regulating co-channel interference, adjacent channel interference, or antenna height and transmitter power." In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Third Report and Order, 9 FCC Rcd 7988, 7998 (1994) ("CMRS Third Report and Order").

<sup>30</sup> The Commission considered similar impacts on existing service in the CMRS rulemaking. Specifically, the Commission decided that existing service-specific technical rules "merely reflect such factors as propagation characteristics, system design, and available equipment" and that "conforming these [CMRS technical rules] to a uniform standard would be costly and potentially disruptive without yielding any corresponding benefit." CMRS Third Report and Order at 8061.

Moreover, less than two years ago, the Commission modified the technical rules applicable to CMRS providers to achieve regulatory symmetry as required under the 1993 Budget Act.<sup>31</sup> Further revision of the rules may disrupt the objectives achieved in that proceeding. Preserving the current technical regulations will ensure that the wireless service providers — whether engaged in mobile or fixed services — will compete on a level playing field.

The Filers agree that the Commission should continue to regulate CMRS licensees under current CMRS regulations as long as the carrier is offering interconnected, for-profit mobile service to the public. As long as fixed service is not replacing mobile service, carriers and the Commission should not be burdened with a dual set of regulations. Moreover, as the Commission notes, multiple layers of regulation will discourage the development of integrated networks and would be contrary to the public interest.<sup>32</sup>

Similarly, the Filers support minor editing of existing definitions and operational rules to reflect that fixed and mobile services can be provided over PCS, cellular, and paging frequencies. A list of proposed changes is attached hereto.

### **Conclusion**

The public interest will be served by expanding the scope of services that can be provided using CMRS spectrum. Accordingly, the Filers commend the Commission for its proposal to allow broadband CMRS providers to compete in the provision of local loop service and it encourages the adoption of rules allowing the provision of other

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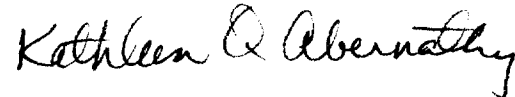
<sup>31</sup> Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI § 6002(b), 107 Stat. 312, 392 (1993).

<sup>32</sup> Notice at 12.

fixed wireless services. Permitting narrowband CMRS licensees to provide fixed services will promote competition and speed deployment of new technologies and services to the public. In order to protect existing wireless operations and service, the regulatory changes proposed in this proceeding should be implemented with the few modifications to existing technical rules suggested herein.

Respectfully submitted,

**AIRTOUCH COMMUNICATIONS, INC.**

A handwritten signature in black ink that reads "Kathleen Q. Abernathy". The signature is written in a cursive, flowing style.

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## Proposed Changes to FCC Rules

### § 22.99. Definitions.

*Cellular system.* An automated high capacity system of one or more multichannel base stations designed to provide radio telecommunication services to ~~fixed or~~ mobile stations over a wide area in a spectrally efficient manner. Cellular systems employ techniques such as low transmitting power and automatic hand-off between base stations of communications in progress to enable channels to be reused at relatively short distances. Cellular systems may also employ digital techniques such as voice encoding and decoding data compression, error correction, and time or code division multiple access in order to increase system capacity.

*Pager.* A small radio receiver ~~designed~~ to be carried by a person ~~or affixed at a permanent location, designed to~~ and to give an aural, visual or tactile indication when activated by the reception of a radio signal containing its specific code. It may also reproduce sounds and/or display messages that were also transmitted. Some pagers also transmit a radio signal acknowledging that a message has been received.

*Public Mobile Services.* Radio services in which common carriers are authorized to offer and provide mobile and ~~related~~ fixed radio telecommunication services for hire to the public.

### § 22.303 Retention of station authorizations; identifying transmitters.

The current authorization for each station, together with current administrative and technical information concerning modifications to facilities pursuant to § 22.163 and added facilities pursuant to § 22.165 must be retained as a permanent part of the station records. A clearly legible photocopy of the authorization must be available at each regularly attended control point of the stations, or in lieu of this photocopy, licensees may instead make available at each regularly attended control point the address or location where the licensee's current authorization and other records may be found. The station call sign must be clearly and legibly marked on or near every transmitting ~~base or control~~ facility, ~~other than mobile transmitters~~, of the station.

### ~~§ 22.323 Incidental communication services.~~

~~Carriers authorized to operate stations in the Public Mobile radio services may use these stations to provide other communications services incidental to the primary public mobile service for which the authorizations were issued, provided that:~~

~~(a) The costs and charges of subscribers who do not wish to use incidental services are not increased as a result of provision of incidental services to other subscribers;~~

~~(b) The quality of the primary public mobile service does not materially deteriorate as a result of provision of incidental services, and neither growth nor availability of the primary~~

~~public mobile service is significantly diminished as a result of provision of incidental services;~~

~~— (c) — The provision of the incidental services is not inconsistent with the Communications Act of 1934, as amended, or with FCC rules and policies; and~~

~~— (d) — The licensee notifies the FCC by letter before providing the incidental services. This notification must include a complete description of the incidental services.~~

## **§ 22.901 Cellular service requirements and limitations.**

(d) *Alternative technologies and auxiliary services.* Licensees of cellular systems may use alternative cellular technologies and/or provide auxiliary common carrier services, including personal communications services (as defined in part 24 of this chapter) on the communications channels in their assigned channel block, ~~provided that cellular service is available to subscribers whose mobile equipment conforms to the cellular system compatibility specification (see § 22.933).~~

(1) Licensees must perform or obtain an engineering analysis to ensure that interference to the service of other cellular systems will not result from the implementation of auxiliary services or alternative cellular technologies.

(2) Alternative technology and auxiliary service operations are exempt from the channeling requirements of § 22.905, the modulation requirements of § 22.915, the wave polarization requirements of § 22.367, the compatibility specification in § 22.933 and the emission limitations of §§ 22.357 and 22.917, except for emission limitations that apply to emissions outside the assigned channel block.

## **§ 22.923 Cellular system configuration.**

Mobile stations communicate with and through base transmitters only. Base transmitters communicate with ~~fixed~~ or mobile stations directly or through cellular repeaters. Auxiliary test stations may communicate with base, ~~fixed~~, or mobile stations for the purpose of testing equipment.

## **§ 22.927 Responsibility for ~~mobile stations~~ subscribers.**

~~Mobile~~ Stations that are subscribers in good standing to a cellular system, when receiving service from that cellular system, are considered to be operating under the authorization of that cellular system. Cellular system licensees are responsible for exercising effective operational control over mobile stations receiving service through their cellular systems. Mobile stations that are subscribers in good standing to a cellular system, while receiving service from a different cellular system, are considered to be operating under the authorization of such different system. The licensee of such different system is responsible, during such temporary period, for exercising effective operational control over such mobile stations as if they were subscribers to it.